

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE CITY OF ST. PAUL

In the Matter of All Licenses held by
Jamal & Saed Co., d/b/a St. Paul Grocery
Store, for the Premises Located at 712
University Avenue West in St. Paul

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came on for hearing before Administrative Law Judge Thomas W. Wexler on October 2, 2013, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. The record closed the same day.

Geoffrey Karls, Assistant St. Paul City Attorney, appeared for the City of St. Paul (City). Carl J. Newquist, Newquist & Herrick Law Offices, P.C., appeared for Jamal & Saed Co. d/b/a St. Paul Grocery Store (Licensee).

STATEMENT OF ISSUES

Does the City have reasonable cause to revoke the cigarette license of Licensee?

SUMMARY OF RECOMMENDATION

The undersigned Administrative Law Judge recommends that the revocation of Licensee's cigarette license be affirmed.

Upon the evidence presented and the arguments of counsel the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Licensee is a Minnesota limited partnership. Jamal Mohamud Aden and Nahida (Saed) Marouf are each fifty percent owners. They do business as "St. Paul Grocery." Until recently, Licensee operated two small grocery stores in St. Paul, Minnesota. One store was located at 631 West University Avenue. The other store is located at 712 West University Avenue. The 631 store is closed because the building in which it was a tenant has been condemned. This matter involves only the 712 store.¹

¹ Testimony of Jamal Aden, opening statement of Licensee, and Exs. B and 14.

2. The City had issued two licenses to Licensee, a grocery license and a cigarette license. The grocery license is now under the control of the United States Department of Agriculture (USDA).² The City still has authority to issue the cigarette license. Only the cigarette license at the 712 store is at issue in this proceeding.³

3. Licensee had been authorized by the USDA to participate in the Electronic Benefits Program (EBT) and the Supplemental Nutrition Assistance Program (SNAP), but the USDA recently withdrew those authorizations. Part of the reason for the withdrawal was that, on May 17, 2011, the Licensee exchanged SNAP benefits for cash in a sting operation conducted by the City police department. The withdrawal procedure was not started by the USDA until June 2013, more than two years after the 2011 sting operation. Licensee has appealed that action in a different venue.⁴

4. In the May 17, 2011 sting operation, a confidential reliable informant (CI) entered the 712 store and asked Mr. Aden if he would swipe the CI's EBT card for \$100, and give the CI \$50 in cash. Mr. Aden swiped the card for \$97.08, but just as this was happening a young male poked his head in the door and said the police were outside in a truck. Mr. Aden told the CI to come back later to get the money. The CI returned in about twenty minutes and was given \$50 in cash by a clerk who had been in the store earlier when the EBT card was swiped.⁵

5. On July 10, 2013, the City issued a "Notice of Intent to Revoke Licenses" (Notice) directed to Licensee at both addresses. The Notice stated that the licensing office would recommend revocation according to Saint Paul Legislative Code § 310.05 (m) (5), and set forth in writing the reasons for the action.⁶

6. The City's Department of Safety and Inspections based its recommendation for revocation of all licenses on the following grounds:

- A. Licensee purchased and allowed the purchase of stolen retail items.
- B. Licensee exchanged and allowed the exchange of food stamp benefits for cash.
- C. Licensee sold synthetic chemicals. Licensee sold and allowed the sale of scheduled synthetic marijuana.
- D. Licensee sold single cigarettes.

² Ex. A.

³ Opening statement of the City.

⁴ Opening statement of Licensee and Exs. 1, 8 and 14.

⁵ Ex. 1.

⁶ Ex. 10.

- E. Licensee has operated in a manner that is disruptive to the community and negatively impacts quality of life. The locations have repeatedly remained open past posted hours of operation and into early morning hours.
- F. Employees have been observed smoking inside the store.
- G. Individuals known to be affiliated with gangs have been observed loitering at both locations.
- H. Shots were fired in the parking lot adjoining the 712 W. University Avenue location on September 11, 2012 and on December 15, 2012.
- I. Both locations were found to have many building and/or fire code violations. The 631 location was condemned.

7. On January 11, 2013, the City conducted another sting operation. A CI went to the 712 store to purchase two single cigarettes (called “loosies”) for one dollar. The CI purchased two loosies from Mr. Marouf. On January 17, 2013, the CI went to the 631 store and also purchased two loosies for one dollar.⁷

8. On June 6, 2013, the City police conducted another sting operation. A CI was provided with four new containers of Target Store laundry detergent. The CI entered the 712 store and offered to sell the detergent to Mr. Marouf. The retail value of the detergent was under \$50.00. The CI told Mr. Marouf that the items were stolen. Mr. Marouf placed a phone call to the 631 store and then told the CI to go to the 631 store for payment. The CI went to the 631 store and was paid \$15.00.⁸

9. In 2013, the City police department, in conjunction with other law enforcement agencies, conducted six sting operations at Licensee’s stores. On five of the six occasions the CI entered the store and purchased a synthetic chemical substance, XLR-11, which is analogous to marijuana. Five of the six sales were made by Mr. Aden. On one of the six occasions the CI purchased marijuana. XLR-11 is a type of analog and a controlled substance.⁹

10. On June 6, 2013, the City police department, in conjunction with federal authorities and other law enforcement agencies, executed simultaneous search warrants at the two stores and at the residences of Mr. Aden and Mr. Marouf. The inventory of what they seized has not been made an exhibit in this hearing. However, they did seize a large amount of synthetic drugs from the basement of the 631 store. There were approximately 500 packages of “Scooby” snacks which contained synthetic

⁷ *Id.*

⁸ Ex. 2 and Test. of Sgt. Anderson.

⁹ *Id.*

drug material. They also seized electronic evidence which tended to show welfare fraud.¹⁰

11. The City alleges that there is disproportionate violence and gang activity near the stores. There have been assaults, robberies, and shootings in adjacent parking lots and nearby. Suspicious persons seem to be hanging around the stores, which the City contends impacts the quality of neighborhood life. There is evidence that the stores attract persons who engage in criminal activity. Because there is substantial reason to believe that the stores are engaging in criminal activity, there is also substantial reason to believe that the stores are attracting persons who are inclined to engage in unlawful activity, including the collateral consequences of that activity, fights, shootings and disorderly conduct.¹¹

12. Licensee passed all but one of the six tobacco compliance checks conducted by the City between July 28, 2011, and March 28, 2013. The one compliance check it failed was on August 4, 2011, related to a sale of loosies. Licensee paid a fine for that violation. However, there have been other unlawful cigarette sales in January 2013 that were documented in sting operations.¹²

13. On July 10, 2013, the City notified Licensee that the City intends to recommend revocation of all City licenses held by Licensee.¹³ Licensee timely requested a hearing.

14. Sergeant Anderson, a City police officer who has been involved in investigation of Licensee, testified that other more substantial criminal matters are being investigated by the federal government and other law enforcement agencies, which has caused the City to defer charging its lower level crimes. However, he testified that other charges are certain to follow.¹⁴

From the foregoing findings of fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The City of St. Paul and the Office of Administrative Hearings have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 340A.415 and St. Paul Legislative Code §§ 310.05 and 310.06.

2. The City has complied with all relevant procedural requirements of ordinance and rule.

¹⁰ *Id.*

¹¹ *Id.*

¹² Exs. 2 and 4.

¹³ Ex. 10-1.

¹⁴ Test. of Sgt. Anderson.

3. Saint Paul Legislative Code § 310.06 states grounds for adverse license actions. Sections 310.06 (b) (6) (a) and (c) and 310.06 (b) (8) are specifically identified in the Notice.¹⁵

4. Code section 310.05 is a lengthy section. It sets forth hearing procedures and, in section (m), provides a matrix of penalties for first, second, third and fourth license violations. Part (m) (5) relates to “commission of a crime other than a felony on the premises by a licensee or employee.” For a first violation, the matrix penalty is a \$500 fine. For a second violation, the penalty is a \$1,500 fine. For a third violation, the penalty is a 5-day suspension. For a fourth violation, the penalty is revocation of the license.¹⁶

5. Code section 310.05 (m) provides that the matrix penalties are presumed to be appropriate for every case, but also notes that the city council may deviate in an individual case where the council finds substantial and compelling reasons making it more appropriate to do so. If the council deviates, it must provide written reasons why the penalty selected was more appropriate.¹⁷

6. Code section 310.05 (m) permits the City to impose penalties different than suggested by the matrix when substantial and compelling reasons make it more appropriate to do so.

7. The City has complied with the notice requirements of Code section 310.05 (m).

8. The City has shown substantial and compelling reasons to revoke all the City licenses of Licensee for reasons identified in Saint Paul Legislative Code §§ 310.06 (b) (6) (a) and (c) and 310.06 (b) (8).

9. The memorandum attached hereto is incorporated by this reference.

Based upon these conclusions, and for the reasons stated in the attached memorandum, the Administrative Law Judge makes the following:

¹⁵ A copy of code sections 310.05 and 310.06 were provided at the hearing, and have been now marked as Exhibits 15 and 16 respectively.

¹⁶ St. Paul Legislative Code § 310.05 (m), Ex 15.

¹⁷ *Id.* and Ex. 10.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the City of St. Paul **REVOKE** all licenses of Licensee granted by the City.

Dated: November 7, 2013

s/Thomas W. Wexler
THOMAS W. WEXLER
Administrative Law Judge

Digitally recorded; no transcript prepared

NOTICE

This Report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

Licensee and its owners have not been charged with any crimes. Nonetheless, there is more than probable cause to believe that Licensee has knowingly received stolen goods, sold and possessed illegal drugs, engaged in fraudulent transactions, and violated cigarette sales laws at the 712 store location as well as at the 631 location. It appears that Licensee could easily be prosecuted for the crimes implicated by the various sting operations conducted by the City. The City can consider these reasonably known facts to make its licensing decisions.

The criminal activity near Licensee's 712 store may or may not be related to Licensee's activities inside the store, but the City has abundant direct evidence to justify revocation of Licensee's sole remaining City license, the cigarette license.

Licensee cannot reasonably portray itself as a victim of neighborhood crime in order to escape loss of license, because the apparently illegal activities of Licensee are sufficient in themselves to justify revocation of its City license. The City ought not to be compelled to license a business for any purpose, when the license is used, in part, to facilitate illegal activity. Revoking the cigarette license may not put Licensee out of

business, but the City should not be made an unwilling partner to the apparent continuation of criminal conduct.

There are substantial and compelling reasons making it appropriate for the City to revoke all City licenses of Licensee.

T. W. W.